

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 4:09 CR 96 RWS (MLM)
)	
ANTHONY RIZZUTI,)	
)	
Defendant.)	

MOTION TO REOPEN PRE-TRIAL DETENTION HEARING

Comes now the United States of America, by and through its Attorneys, Michael E. Reap, Acting United States Attorney for the Eastern District of Missouri, and Robert F. Livergood, Assistant United States Attorney for said District, and moves the Court to reopen the pre-trial detention hearing in this matter.

As and for its grounds, the Government states as follows:

1. On January 30, 2009, the Government filed its motion for pre-trial detention and hearing.
2. On February 5, 2009, a detention hearing was held.
3. On February 10, 2009, the Court issued its Order Setting Conditions of Release. As part of its order, the Court ordered that the conditions of release include home detention and restrictions on defendant's travel.
4. On March 18, 2009, defendant filed his motion to modify conditions of pre-trial release. Specifically, defendant requested that the Court remove its conditions on home detention and travel. (Doc. 23, at 3).

5. On April 15, 2009, after the matter had been briefed by the parties, the Court issued its “Memorandum and Order” denying defendant’s request to modify conditions of pre-trial release. The Court denied defendant’s motion to modify conditions of pre-trial release stating “that the conditions of release sought to be removed by defendant are required by the Adam Walsh Act.” (Doc. 28 at 5). As part of its ruling, the Court noted: “The court in [United States v.]Kahn[, 524 F.Supp. 2d 1278 (W.D. Wash. 2007)] mentions that other district court cases dealt with the constitutionality of the Adam Walsh Act’s mandatory conditions of release, an issue not decided in Kahn and not presented in the instant case.” Id. at 2 n. 5 (citations omitted).

6. On April 22, 2009, the Court issued a “Memorandum and Order” in United States v. Smedley, 4:09 CR 99 CAS (FRB). There, the Court considered whether the provisions of the Adam Walsh Act that require the imposition of specific conditions of release in cases involving a minor victims and which are prosecuted under 18 U.S.C. § 2252A(a)(2)¹ violated the Due Process Clause of the Fifth Amendment. United States v. Smedley, 4:09 CR 99, doc. 42 at 2. The Court found “[u]nder procedural due process, the Adam Walsh Act’s amendments to the Bail Reform Act of 1984 are unconstitutional on their face.” Id. at 9.

7. The instant case does not involve 18 U.S.C. § 2252(a)(2), however, it does involve 18 U.S.C. § 2422. Section 2422 is one of the sections enumerated in the Adam Walsh Act’s amendments to the Bail Reform Act. See supra, footnote 1.

¹Title 18, U.S.C., Section 3142 (c) (1) (B). The provision provides, in part, “In any case that involves a minor victim, under section . . . 2252(a)(2), . . . 2422 . . . of this title, . . . any release order shall contain, at a minimum, a condition of electronic monitoring. . . .”

8. On May 4, 2009, defendant filed his second motion to modify conditions of release. (Doc. 29). Defendant cited to the Court's holding in Smedley arguing that the conditions imposed on defendant violated the Fifth Amendment to the Constitution and should be removed.

8. Although the government does not concede that Adam Walsh Act's amendments to the Bail Reform Act are unconstitutional, the government requests leave to reopen the detention hearing to present additional evidence as to why the Court's restrictions should continue to be imposed on the defendant. Defense counsel has indicated that he opposes reopening the hearing for this purpose.

WHEREFORE, the government requests the Court to reopen open the detention hearing so that the government may present additional evidence in support of the conditions previously ordered by the Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2009, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

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